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OFFICE OF PETITIONS

In re

Buehler, et al.

Application No. 10/084,607

Filed: February 27, 2002

Patent No. 6,863,467

Issued: March 8, 2005

: DECISION ON APPLICATION

: FOR PATENT TERM ADJUSTMENT

: AND NOTICE OF INTENT

: TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d)", filed May 3, 2005. Patentees request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from one (1) day to one hundred eighty-three (183) days.

The application for patent term adjustment is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred eighty-three (183) days.

On March 9, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was one hundred fifty-one (151) days. On March 8, 2005, the above-identified application matured into U.S. Patent No. 6,863,467. The patent issued with a Patent Term Adjustment of one (1) days.

Patentees state that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of one (1) days based on an adjustment for PTO delay of one hundred fifty-one (151) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), and sixty (60) days pursuant to 35 U.S.C. 154(b)(1)(B)(iii) and 37 C.F.R. §1.703(a)(6), reduced by applicants' delays of ninety (90) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b), and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(10). The PTO delay of 151 and applicant delay of 120 days have been reviewed and found to be correct. The adjustments of 90 and 60 days are at issue.

A Notice of Allowance was mailed on March 9, 2004. A review of the record reveals that the issue fee was timely paid on June 7, 2004, not September 7, 2004. Accordingly, applicants should not have been assessed applicant delay of 90 days. As the application did not issue until March 8, 2005, PTO delay of one hundred fifty-two (152) days should have been assessed, not 60 days.

In view thereof, issuance of a certificate of correction pursuant to 35 U.S.C. §254 and 37 C.F.R. §1.322 is appropriate. The determination of patent term adjustment is one hundred eighty-three (183) days (303 (152+151) days of PTO delay, reduced by 120 days of applicant delay).

The \$200 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 23-1925, as authorized.

The application file is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 CFR 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by one hundred eighty-three (183) days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter

Senior Legal Advisor

Office of Patent Legal Administration

Office of Deputy Commissioner

for Patent Examination Policy

Enclosure: draft Certificate of Correction

Day: Monday Date: 9/26/2005





PTA Calculations for Application: 10/084607								
Application Filing Date:	02/27/2002	PTO Delay (PTO):	211					
Issue Date of Patent:	03/08/2005	Three Years:	0					
Pre-Issue Petitions:	0	Applicant Delay (APPL):	210					
Post-Issue Petitions:	0	Total PTA (days):	183					
PTO Delay Adjustment:	182							

File Contents History							
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		ADJUSTMENT OF PTA CALCULATION BY PTO	182				
		PTA 36 MONTHS	<u> </u>				
43	03/08/2005	PATENT ISSUE DATE USED IN PTA CALCULATION	60		39		
42	02/09/2005	RECEIPT INTO PUBS					
41	02/08/2005	DISPATCH TO FDC					
40	02/08/2005	APPLICATION IS CONSIDERED READY FOR ISSUE					
39	09/07/2004	ISSUE FEE PAYMENT VERIFIED		90	26		
38	02/03/2005	MAIL RESPONSE TO 312 AMENDMENT (PTO-271)					
37	02/02/2005	RESPONSE TO AMENDMENT UNDER RULE 312					
36	12/07/2004	RECEIPT INTO PUBS					
35	10/20/2004	RECEIPT INTO PUBS					
34	06/07/2004	REFERENCE CAPTURE ON IDS					
33	06/07/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0			
32	06/07/2004	AMENDMENT AFTER NOTICE OF ALLOWANCE (RULE 312)		120	38		
31	06/07/2004	WORKFLOW INCOMING AMENDMENT IFW					
30	06/07/2004	ISSUE FEE PAYMENT RECEIVED					
29	05/07/2004	RECEIPT INTO PUBS					
28	03/31/2004	RECEIPT INTO PUBS					
27	03/30/2004	WORKFLOW - FILE SENT TO CONTRACTOR					
26	03/09/2004	MAIL NOTICE OF ALLOWANCE					
25	03/09/2004	MAIL EXAMINER'S AMENDMENT					
24	03/05/2004	ISSUE REVISION COMPLETED					

23	03/05/2004	EXAMINER'S AMENDMENT COMMUNICATION		
22	03/05/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED		
21	03/05/2004	NOTICE OF ALLOWABILITY		
20	02/11/2004	MAIL RESTRICTION REQUIREMENT		
19	02/06/2004	REQUIREMENT FOR RESTRICTION / ELECTION		
18	01/20/2004	IFW AMENDED CASE PROCESSING COMPLETE		
17	01/20/2004	DATE FORWARDED TO EXAMINER		
16	01/02/2003	RESPONSE AFTER NON-FINAL ACTION		
15	09/30/2003	MAIL NON-FINAL REJECTION	151	16
14	09/22/2003	NON-FINAL REJECTION		
13	09/12/2003	CASE DOCKETED TO EXAMINER IN GAU		
12	05/28/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		
11	05/28/2002	NEW OR ADDITIONAL DRAWING FILED		
10	09/06/2002	CASE DOCKETED TO EXAMINER IN GAU		
9	06/19/2002	APPLICATION DISPATCHED FROM OIPE		
8	06/07/2002	APPLICATION IS NOW COMPLETE		
7	HC15/7X/7A16171	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM		
6	05/28/2002	AN ASSERTION THAT THE NATURE OF THE LEGAL ENTITIES HAVING PROPERTY RIGHTS TO THE PATENT AUTHORIZES T		
5		A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC		
4	05/28/2002	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS		
3	11614/71/268171	NOTICE MAILEDAPPLICATION INCOMPLETE FILING DATE ASSIGNED		
2	03/06/2002	IFW SCAN & PACR AUTO SECURITY REVIEW		
1	02/27/2002	INITIAL EXAM TEAM NN		

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EXPLANATION OF PTA CALCULATION

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